THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :6993 1999

DATED:03-10-2007

BETWEEN:

Jarajapu Asiraya.

..... PETITIONER

AND

The District Collector,
Srikakulam & 3 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner questions the notice in Form-II under Section 11(1) of the A.P.Escheats and Bona Vacantia Act, 1974 (for brevity, 'the Act') published in the District gazette, dated 13-01-1999, informing the general public that the property of the church including the building situated over an extent of Ac.0.39 cents and the vacant land of an extent of Ac.3.91 cents total extent of Ac.4.30 cents, belonging to Radius Mission has been taken into custody by the Joint Collector, Srikakulam for treating it as Escheats Bona Vacantia and any person who has got any claim to the said property are called upon to prefer their claims within three months from the date of publication of the said notice. Petitioner questions the said notice on the ground that initiation of proceedings under Section 11 of the Act by issuing the said notice is illegal and arbitrary on the ground that the petitioner is in possession of the said property and therefore, the local Officer has to institute a suit for recovery of possession under Section 8 of the Act.

3. It is the case of the petitioner that the Canadian Baptist Overseas Mission Board purchased the said extent of Ac.4.30 cents in Sy.No.14/2 situated in N.K.Rajapuram village,

Palakonda mandal, Srikakulam District and constructed a church over it along with compound wall in an extent of Ac.0.45 cents. The said property of Ac.4.30 cents belongs to the Canadian Baptist Overseas Mission Board and the petitioner was associated with the family of one Rev.Dr.Baars who developed the said property. The said Rev.Dr.Baars who was looking after the said property of the Board left India along with his family members and made an oral gift of the building and the entire vacant land of Ac.4.30 cents in favour of the petitioner out of love and affection on account of his long association and services and since then he has been in peaceful possession and enjoyment of the said property by paying revenue to the concerned revenue Officers. His name was shown as possessor and occupant in the village records of 10(1) Adangal and 10(2) Adangal. While so, the members of the trust association, Convention of Baptist Churches of Northern Circars filed A.T.C.Nos.1 of 1982; 16 of 1983; 5 of 1986; and13 of 1989 on the file of the Special Officer/District Munsif, Palakonda for possession of the petitioner's land but they were unsuccessful. Thereafter, petitioner made an application before the concerned officials for grant of ryotwari patta but no ryotwari patta or pass book was issued to the petitioner and therefore he has issued a legal notice, dated 16-10-1995, requesting the revenue authorities to issue ryotwari pass book. Pursuant to the said notice the 3rd respondent-Revenue Divisional Officer issued a notice, dated 05-02-1996, directing him to appear before him with all the concerned records and he appeared on 13-02-1996 and subsequently in 1997 also another notice was issued to him to appear but enquiry could not be conducted. Again on 29-06-1998, the Revenue Divisional Officer issued another notice directing him to appear on 13-07-1998 and though he appeared on

13-07-1998 the Revenue Divisional Officer, Palakonda did not conduct any enquiry, and the Revenue Divisional Officer along with his staff visited the said land on 10-08-1998 and threatened the petitioner with dire consequences if he does not leave the land.

4. It is stated that the petitioner protested by saying that it is a zeroyati land, but his request was not considered and the 3rd respondent again visited on 16-08-1998 and trampled the transplanted paddy crop and spoiled the seed bed. Under those circumstances, petitioner filed W.P.No.23629 of 1998 and this Court by order, dated 20-08-1998, disposed of the same at the stage of admission directing the respondents not to evict the petitioner from the land in question without following due procedure as per law. Petitioner asserts that he is in possession of the said land and in fact, 4th respondent-Mandal Revenue Officer, Palakonda issued notice in Form-II on 18-09-1998 under the Act calling upon the petitioner to submit his explanation within a period of three months and accordingly he has offered his claim regarding the property on 13-10-1998, but the Mandal Revenue Officer did not proceed further. Thereafter the 2nd respondent-Joint Collector, Srikakulam issued notice in Form-II of the Act in his proceedings in Rc.No.12494/98.C3, dated 13-01-1999, to the effect that the petitioner's land is taken into the custody treating it as escheat/Bona Vacantia and any person who has got any claim to the said property may prefer his claim within a period of three months. Questioning the same, this Writ Petition has been filed stating that the petitioner is in continuous possession and enjoyment of the said property for a period of three years, and in those circumstances, it is not open for the local Officer as notified under Section 5 of the Act, to issue a notice under Section 11 of

the Act without resorting the recovery of possession under Section 8 of the Act by filing a civil suit in a Court for declaration of Government right and for recovery of possession. It is further stated that under Section 5 of the Act there is no notification appointing the Joint Collector as a local Officer and therefore notice issued by the Joint Collector is illegal and without jurisdiction.

5. Counter has been filed stating that the land in question was registered as zeroyati land in Sy.No.14/2 of N.K.Rajapjuram village, Palakonda mandal, Srikakulam District as per the revenue records i.e., Adangal 10(1) and village account No.3. Since the Missionary people left India long back in 1972 the land was left without ownership and as such it was treated as Bona Vacantia land and action has been initiated by the Mandal Revenue Officer, Palakonda under Sections 5 and 11(1) of the Act reporting the matter to the Collector, Srikakulam and published Form-II notice in the manner prescribed. At that stage, petitioner filed W.P.No.23629 of 1998 which was disposed of by this Court directing the respondents not to dispossess the petitioner without following due procedure.

6. A perusal of the records goes to show that
Section 7 notice under the A.P.Land Encroachment Act, 1905 was issued to the person who was cultivating the said land namely, P.Lakshminarayana, and after issuing notice under Section 7 of the A.P.Land Encroachment Act, orders have been passed under Section 6 of the A.P.Land Encroachment Act on 09-08-1998. Subsequent to the orders passed by the Mandal Revenue Officer, action was sought to be taken to dispossess the said Lakshminarayana and it appears the said Lakshminarayana made

a written representation before the Mandal Revenue Officer to permit him to cut the existing paddy crop so as to enable him to hand over the possession of the same to the Government. It is stated that the 2nd respondent-Joint Collector who is the local Officer, as notified under Section 5 of the Act in G.O.Ms.No.1462, Rev.Department, dated 31-10-1977, in exercise of powers conferred under sub-Section 1 of Section 5 of the Act appointed the Joint Collectors as local Officers within the jurisdiction of their respective District to exercise the powers and perform the functions assigned by or under the Act. Thus the Joint Collector who is a designated local Officer under the Act inspected the land and took possession on 04-01-1999.

7. It is the contention of the learned counsel appearing for the petitioner that pursuant to the order of this Court in W.P.No.23629 of 1999 which was disposed of on 29-09-1998 directing the respondents not to dispossess the petitioner without following due procedure of law and as he was in possession as on the date of disposal of the said Writ Petition the Joint Collector could not have taken possession on

04-01-1999 and therefore, it is the case of the petitioner that he is in possession and enjoyment of the said property. On the other hand, learned Government Pleader submits that the petitioner is not at all in possession and one P.Lakshminarayana alone was cultivating the said land against whom proceedings have been initiated under the A.P.Land Encroachment Act by issuing notice under

Section 7 of the A.P.Land Encroachment Act and by passing orders under Section 6 of the A.P.Land Encroachment Act on 09-09-1998. Accordingly, possession was taken by the 2nd

respondent on 04-01-1998 as the said Lakshminarayana was evicted under the Land Encroachment Act.

8. Insofar as the contention of the learned counsel appearing for the petitioner that even assuming that the petitioner has no authority to claim the said property and he never surrendered the possession, the authorities ought to have initiated action under Section 8 of the Act by instituting a civil suit in a Court for declaration of the Government right over the said property and for recovery of the possession. The learned Government Pleader submits that the petitioner was not in possession and therefore, the question of initiating action under Section 8 of the Act does not arise and as the land was taken in possession of the local authority, as procedure has to be followed to declare it as a Bona Vacantia property the local Officer has issued the impugned notice under Section 11(1) of the Act calling upon the persons who were claiming any such right over the said property. Admittedly, the Mandal Revenue Officer is not having any power to initiate action under the Act and therefore, Form-II notice issued under Section 11(1) of the Act on 17-08-1998 by the Tahsildar was without jurisdiction and therefore the 2nd respondent issued a fresh notice published in the District gazette, dated 13-01-1999. Before expiry of three months notice the Writ Petition has been filed on
02-04-1999 and therefore, I am of the opinion that it is just and proper to permit the petitioner to prefer a claim within a reasonable time. It is not in dispute that pursuant to the *status quo* orders passed by this Court on 02-04-1999 the local Officer could not proceed further pursuant to the said notice.

9. It is stated that even according to the petitioner there was

an oral gift. Whether the person-in-charge of the said Church was entitled to make any oral gift or not merely because the name of the occupant was found in column No.13 of the village account, it cannot be said that the possession of the said property was not taken by the local Officer, however, a perusal of the duplicate receipts filed by the petitioner goes to show that there is no survey number of the property and some of the revenue receipts relate to the survey Nos.84 & 1508, whereas one land receipt 1995-1998 issued on 06-02-1995 goes to show that in respect of the survey No.14/2 the name of the said 'Radius Mission' and the name of the petitioner was mentioned. Even though the name of the petitioner was figured along with the Radius Mission it cannot be said that the possession was not taken by the local authority as stated in the counter.

10. Having regard to the facts and circumstances of the case, I am of the opinion that possession was already taken by the local Officer and therefore action has been rightly initiated under Section 11 of the Act, and the petitioner is permitted to prefer a claim within thirty days from the date of receipt of a copy of this order and if any such claim is preferred within thirty days from the date of receipt of a copy of this order, 2nd respondent shall take appropriate action as contemplated under Section 11(3) of the Act without any undue delay.

11. Accordingly, Writ Petition is disposed of. No order as to costs.

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V.ESWARAIAH,J

03rd October, 2007.
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